Supreme Court, U.S.
FILED
JUN 10 2003
OFFICE OF THE CLERK

Nos. 02-1574 and 02-1624

In The Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

MICHAEL A. NEWDOW, ET AL.,
Respondents.

ELK GROVE UNIFIED SCHOOL DISTRICT, and DAVID W. GORDON, Superintendent, EGUSD,
Petitioners,

v.

MICHAEL A. NEWDOW,
Respondent.

On Petitions For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

Brief Of The States Of Idaho, Oklahoma, Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, And Wyoming As *Amici Curiae* In Support Of Petitioners

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QUESTIONS PRESENTED

1. Whether the inclusion of the phrase "under God" in the Pledge of Allegiance to the United States Flag violates the Establishment Clause of the First Amendment.

2. Whether a noncustodial parent, who lacks the legal authority to determine his child's education or religious upbringing, has Article III standing to challenge educational practices undertaken by the school in which the custodial parent has chosen to place the child.

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STATEMENT OF *AMICI* INTEREST

The States of Idaho and Oklahoma and 47 other States write to urge the Court to grant *certiorari* in this case.[1] This brief focuses upon the first question presented by the Petitioners, addressing the application of the Establishment Clause of the First Amendment to the United States Constitution to the Pledge of Allegiance.

The decision of the Ninth Circuit – holding that "the school district's policy and practice of teacher-led recitation of the Pledge, with the inclusion of the added words 'under God,' violates the Establishment Clause," U.S. Pet. App. at 17a – conflicts with opinions and observations made by this Court and individual Justices in Establishment Clause cases, with a decision issued by the Seventh Circuit Court of Appeals, and with numerous rulings and observations made by United States District Courts since 1954. Moreover, 41 states have laws, and three more states have recently passed laws, similar to the California law underlying the *Newdow* case, providing for recitation of the Pledge of Allegiance in public schools.

The Ninth Circuit's opinion is a startling departure from Establishment Clause jurisprudence, as complex as that body of law might be. Left alone, the Ninth Circuit's opinion "bans the voluntary recitation of the Pledge of Allegiance in the public schools of the nine western states thereby directly affecting over 9.6 million students, necessarily *implies* that both an Act of Congress and a California law are unconstitutional, . . . and threatens cash-strapped

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[1] It is understood that the Attorney General of California will file an *amicus* brief on behalf of California's Governor, urging the Court to grant *certiorari* in this case.

school districts and underpaid teachers with the specter of civil actions for money damages pursuant to 42 U.S.C. § 1983." U.S. Pet. App. at 68a-69a (emphasis in original; footnotes and citations omitted). Before *Newdow*, the boundaries of the Establishment Clause in the public school setting were clearly understood to protect the Pledge of Allegiance and similar patriotic exercises. Accordingly, the States urge this Court to grant the petitions and consider summary reversal of the Ninth Circuit's judgment.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's decision defies a nation.[2] It begs this Court to exercise judicial discretion in favor of granting the petitions for two compelling reasons consistent with Rule 10 of the Supreme Court Rules. First, the *Newdow* decision is of nationwide interest, as that interest is expressed in public policy through the laws of 41 states. Second, the *Newdow* decision clearly conflicts with the Seventh Circuit Court of Appeals' decision in *Sherman v. Community Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992), *cert. denied*, 508 U.S. 950 (1993). *Newdow* also conflicts with opinions and observations made by this Court and individual Justices confirming the constitutionality of the Pledge of Allegiance. Indeed, many other federal courts have relied upon these opinions and observations in evaluating Establishment Clause issues in public school settings, including recitation of the Pledge of Allegiance.

[2] Shortly after the Ninth Circuit's original decision in *Newdow*, the attorneys general of 50 states and territories sent a letter to the Clerk of the Ninth Circuit, in support of the State of California's motion for rehearing with suggestion for *en banc* review. *See* 9th Cir. R. 25-2 (communications to the court). The letter, dated July 23, 2002, was not made a part of the record in this case, but it was discussed at a congressional hearing and made a part of the committee record. *Ninth Circuit Court of Appeals Reorganization Act of 2001: Hearing on H.R. 1203 Before the Subcomm. on Courts, the Internet, and Intellectual Property of the House Comm. on the Judiciary*, 107th Cong., 2nd Sess., 11, 91-96 (2002) (statement of Alan G. Lance, former Idaho Attorney General (1995-2003), submitting the letter to the subcommittee for the record).

I. The Court Should Grant *Certiorari* Because The Ninth Circuit's Holding Defies The Common Understanding, Embodied In 41 State Statutes, That The Pledge Is Constitutional.

In its amended opinion, the Ninth Circuit apparently decided that it should narrow its initial holding. In the amended opinion, the Ninth Circuit held the "school district's *policy* and *practice* of teacher-led recitation of the Pledge, with the inclusion of the added words 'under God,' violates the Establishment Clause." U.S. Pet. App. 17a (emphasis added). In its original opinion, the Ninth Circuit explicitly held both the federal statute, 4 U.S.C. § 4 (1998), and the school district policy and practice to be unconstitutional. U.S. Pet. App. 52a. Whether or not this was done "in an effort to avoid ultimate Supreme Court review," Circuit Judge O'Scannlain is correct in his dissent from the Ninth Circuit's denial of rehearing *en banc* when he says, regarding the difference between the holdings, that "the amended decision is every bit as bold as its predecessor." U.S. Pet. App. 68a.

Teachers in the Elk Grove Unified School District (EGUSD) begin each school day by leading their students in the Pledge of Allegiance. U.S. Pet. App. 2a. As the Ninth Circuit recognized, this practice is "[i]n accordance with state law and a school district rule. . . . " U.S. Pet. App. 2a.

The school district rule requires that "[e]ach elementary school class [shall] recite the pledge of allegiance to the flag once each day." U.S. Pet. App. 3a. As the Ninth Circuit recognized, the policy was promulgated "[t]o implement the California statute." U.S. Pet. App. 3a. The California statute requires public schools to "begin each day with 'appropriate patriotic exercises' and that '[t]he giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy' this requirement." U.S. Pet. App. 2a, citing Cal. Educ. Code § 52720 (1989). The Pledge of Allegiance is a creature of federal statute which defines the pledge to contain the words "under God." 4 U.S.C. § 4.

The EGUSD's policy and practice do not stand alone and did not originate in the minds of the school board or the teachers. The EGUSD promulgated its policy in order to comply with a mandatory state law that, in turn, depends upon the federal codification of the words that are to be recited each school day. The teachers are simply doing their jobs as required by law.

The California state law is not unusual. Laws providing for recitation of the Pledge of Allegiance in public schools exist in 41 states. *See* Ala. Code § 16-43-5 (West 2001) (students must be afforded opportunity to recite the pledge); Alaska Stat. § 14.03.130 (2000) (the pledge must be recited regularly by willing students); Ariz. Rev. Stat. Ann. § 15-506 (2002) (a time must be set aside for willing students to recite the pledge); Ark. Code Ann. § 6-16-122(a)(7) (Michie 1999) (school boards may allow and encourage teachers to read or post the pledge); Cal. Educ. Code § 52720 (West 1989) (the giving of the pledge shall satisfy the requirement of a daily patriotic exercise); Conn. Gen. Stat. § 10-230(c) (2003) (must have policy to ensure time is available for willing students to recite the pledge);

Del. Code Ann. tit. 14, § 4105 (1999) (pledge shall be performed in the opening exercises of public schools); Fla. Stat. ch. 1003.44(1) (2002) (pledge shall be recited at the beginning of each day by willing students); Ga. Code Ann. § 20-2-310(c)(1) (2001) (students must be afforded an opportunity to recite the pledge each day); Idaho Code § 33-1602(2)-(5) (2001) (the pledge shall be offered each day to willing students); S.H.A. 105 ILCS 5/27-3 (Smith-Hurd 1998) (under Illinois law, the pledge shall be recited each day by willing students); Ind. Code Ann. § 20-10.1-4-2.5 (Burns 2000) (the pledge is a protected writing – principal or teacher may read the pledge in school building, classroom, or at any school event); Kan. Stat. Ann. § 72-5308 (2002) (a program of patriotic observation must include a daily recitation of the pledge); Ky. Rev. Stat. Ann. § 158.175(2) (Michie/Bobbs-Merrill 2001) (school board shall establish a policy for the daily recitation of the pledge by willing students); La. Rev. Stat. Ann. § 17:2115(B) (West 2001) (each school must be allowed the opportunity for group recitation of the pledge); Me. Rev. Stat. Ann. tit. 20-A, § 4805(1) (West 1993) (teachers have a duty to impress upon the students suitable references and observances of the flag); Md. Code Ann. Educ. § 7-105(c) (2001) (all willing students and teachers shall recite the pledge in unison); Mass. Gen. Laws Ann. ch. 71, § 69 (2002 Cum. Supp.) (teachers shall lead students in the pledge at the beginning of each school day); Miss. Code Ann. § 37-13-7(1) (2001) (teachers are required to have their students recite the pledge at least once each school day); Mo. Rev. Stat. § 171.021(2) (2002 Cum. Supp.) (the pledge must be recited by each willing student at least once per week); Mont. Code Ann. § 20-7-133 (2001) (the pledge must be recited by willing students and teachers in all public schools); Nev. Rev. Stat. Ann. § 389.040 (Michie 2002) (time must be set

aside at the beginning of each school day for students to recite the pledge); N.H. Rev. Stat. Ann. § 194:15-c (2002 Cum. Supp.) (a time shall be set aside each school day for willing students to recite the pledge); N.J. Stat. Ann. § 18A:36-3(c) (West 1999) (school board must require willing students to recite the pledge every school day); N.M. Stat. Ann. § 22-5-4.5 (Michie 2001 Cum. Supp.) (the pledge shall be recited daily); N.Y. Educ. Law § 802(1) (McKinney 2000) (the commissioner must prepare a program for a daily pledge); N.C. Gen. Stat. § 115C-47(29a) (1999) (school boards are encouraged to adopt a policy to provide for willing students to recite the pledge on a regular basis); N.D. Cent. Code § 15.1-19-03.1(4) (2001 Pocket Supp.) (school boards may authorize voluntary recitation of the pledge by teachers and students at the beginning of each school day); Ohio Rev. Code Ann. § 3313.602(A) (Baldwin 1999) (school board shall adopt a policy specifying whether the pledge shall be a part of the school's program); Okla. Stat. Ann. tit. 70, § 24-106 (West 2003 Elec. Update) (willing students are authorized to recite the pledge at the beginning of each school day); Or. Rev. Stat. § 339.875 (2001) (school boards must provide an opportunity for willing students to recite the pledge at least once each week of the school year); 24 Pa. Cons. Stat. Ann. § 7-771 (1992) (willing students shall be provided the opportunity to recite the pledge at the beginning of each school day); R.I. Gen. Laws § 16-22-11 (2001) (all public schools shall commence each day with a voluntary recitation of the pledge); S.C. Code Ann. § 59-1-455 (2000 Cum. Supp.) (all willing students must recite the pledge each school day); S.D. Codified Laws Ann. § 13-24-17.2 (2002) (the right to recite the pledge shall not be limited or infringed); Tenn. Code Ann. § 49-6-1001(c)(1) (2002) (school boards shall require daily recitation of the pledge

by willing students); Utah Code Ann. § 53A-13-101.6 (2000) (willing students shall recite the pledge at the beginning of each school day); Va. Code Ann. § 22.1-202(C) (Michie 2002 Cum. Supp.) (willing students shall recite the pledge at the beginning of each school day); Wash. Rev. Code Ann. § 28A.230.140 (West 1997) (willing students shall recite the pledge in each classroom at the beginning of each school day and at the opening of all school assemblies); W. Va. Code § 18-5-15b (1999) (willing students shall recite the pledge at the beginning of each school day); Wis. Stat. Ann. § 118.06 (West 1999) (the pledge shall be offered each day for willing students).[3]

In addition, three states have recently passed legislation similar to the laws discussed above. *See* H.B. 03-1368, 64th Gen. Assembly, 1st Reg. Sess. (Colo. 2003) (passed by the General Assembly and signed by the Governor on June 3, 2003, it requires each school day to begin with a recitation of the pledge, and it will be effective 90 days after adjournment of the General Assembly); S.F. 287, 83rd Reg. Sess. (2003 Minn. Sess. Law Serv. ch. 120, § 1) (passed by the Legislature and approved by the Governor on May 19, 2003, it requires willing students to recite the pledge at least once per week, and it is effective for the 2003-04 school year and later); S.B. 83, 78th Leg., (Tex. 2003) (passed by the Legislature and signed by the Governor on May 28, 2003, it requires recitation of the pledge once per day, and it will become effective beginning with the 2003-04 school year).

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[3] The relevant sections of all the cited state laws are appended to this brief in alphabetical order.

The States urge that the Establishment Clause issue is of broad national interest and concern, as reflected through the laws of the states as discussed above. Certainly, the Ninth Circuit's power reaches only so far, but it is not right for the Pledge of Allegiance to the Flag of the United States of America to be treated differently in the eyes of the law in our indivisible nation.

II. The Court Should Grant *Certiorari* Because The Ninth Circuit's Decision Conflicts With Establishment Clause Jurisprudence.

The Petitioners thoroughly set forth the conflict between circuits. U.S. Pet. at 14; EGUSD Pet. at 8-10. In the *Sherman* case, the Seventh Circuit held that "schools may lead the Pledge of Allegiance daily, so long as pupils are free not to participate." *Sherman*, 980 F.2d at 439. The Seventh Circuit's decision is consistent with this Court's fundamental requirement of voluntariness enunciated in *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943), and it flows unimpeded from observations made by this Court and individual Justices in Establishment Clause cases.

The Petitioners have also thoroughly brought to the Court's attention the fact that the Ninth Circuit's decision is wholly inconsistent with this Court's observations on the Pledge of Allegiance. U.S. Pet. at 14-19; EGUSD Pet. at 8-10. The Ninth Circuit, however, dismissed this Court's statements as *dicta* and claimed, incredibly, that its holding was "not inconsistent with this *dicta*." U.S. Pet. App. at 15a.

With roots in what Circuit Judge O'Scannlain described as the "fountainhead of all school prayer cases," this Court has consistently commented favorably upon the Pledge of Allegiance. U.S. Pet. App. at 71a. In *Engel v. Vitale*,

370 U.S. 421 (1962), the Court described the boundaries of its holding by explaining that school children may recite historical documents or sing officially espoused anthems which contain references to God because "[s]uch patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise" of directing students to recite a prayer composed by state officials. *Engel*, 370 U.S. at 435 n.21. The observations made thereafter by this Court and individual Justices concerning the Pledge of Allegiance flow directly from the Establishment Clause boundary set in *Engel*.

Dicta is defined as a judicial opinion "which does not embody the resolution or determination of the court." Black's Law Dictionary 408 (5th ed. 1979). Admittedly, in *County of Allegheny v. ACLU*, 492 U.S. 573 (1989), the Court said its previous characterizations of the pledge and national motto as being consistent with the Establishment Clause were *dicta*, but in the next breath the Court once again returned to the understood boundaries of the Establishment Clause by saying there is an "obvious difference between crèche displays and references to God in the motto and the pledge." *County of Allegheny*, 492 U.S. at 602.

The States urge that, whether or not considered *dicta* in a technical sense, the Supreme Court's observations on the Pledge were and are integral to the Establishment Clause issue. The statements were not unrelated to the main issue – they were not musings hidden in a footnote of an Admiralty Clause case. The Court's analytical observations served a vital function by setting a clear boundary and assisting the public's understanding of the Court's decision.

The Ninth Circuit's decision can hardly be characterized as "not inconsistent with" the Supreme Court's and individual Justices' comments upon the application of the

Establishment Clause to the Pledge of Allegiance. The Ninth Circuit held the Pledge of Allegiance to be unconstitutional. This Court has said, or at least strongly implied, that it is not. To brush aside this Court's written history and then deny that anything inconsistent with that history has occurred is indeed "wrong, very wrong." U.S. Pet. App. at 67a.

Many other federal courts have cited and relied upon the *Engel* line of cases in commenting and ruling upon the Pledge of Allegiance. The Ninth Circuit decision is a lonely one that goes against the considered judgments and analyses of numerous other federal courts.

Somewhat ironically, the earliest published federal case to have directly addressed an Establishment Clause challenge to the 1954 version of the Pledge of Allegiance came from California. *Smith v. Denny*, 280 F. Supp. 651 (E.D. Cal. 1968), *appeal dismissed*, 417 F.2d 614 (1969).[4] Therein, the court resisted plaintiffs' invitation to remove the words "under God" from the Pledge of Allegiance, and ruled it to be consistent with the Free Exercise Clause and the Establishment Clause. *Smith*, 280 F. Supp. at 654. In so doing, the court relied heavily upon *Engel*.[5] *Smith*, 280 F. Supp. at 653.

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[4] The Ninth Circuit dismissed the appeal because the plaintiffs' interest in the litigation ended when their children graduated from high school. *Smith*, 417 F.2d at 614.

[5] Two years after the court's decision in *Smith*, the Ninth Circuit took an appeal in an Establishment Clause case challenging the national motto, "In God We Trust." The Ninth Circuit upheld the national motto, quoting the key language from the *Engel* case, which is at the heart of the Petitioners' argument, and ruling that *Engel* "direct[s] the result here . . . ." *Aronow v. United States*, 432 F.2d 242, 243-44 (9th Cir. 1970). In *Newdow*, the Ninth Circuit said the *Aronow* case is "distinguishable in many ways from the present case," the most

(Continued on following page)

Most recently, the United States District Court for the Eastern District of Virginia upheld a similar, albeit broader, challenge to the Pledge of Allegiance. *Myers v. Loudoun County Sch. Bd.*, No. CIV02-1528-A, 2003 WL 21011172 (E.D. Va. Feb. 21, 2003). Therein, the court ruled the Pledge of Allegiance was neither a violation of the Establishment Clause, nor a violation of the Free Exercise Clause. The *Myers* case was issued seven days before the Ninth Circuit denied rehearing and issued its amended opinion in *Newdow*.

A number of other federal courts have commented favorably on the Pledge, in a manner similar to that of this Court in defining the boundaries of the Establishment Clause in the public school setting and helping the public to understand the reach of the judgment. *See Glassroth v. Moore*, 229 F. Supp.2d 1290, 1308 (M.D. Ala. 2002) (distinguishing "ceremonial deisms" from public acknowledgments of a sectarian God); *ACLU of Tenn. v. Rutherford County, Tenn.*, 209 F. Supp.2d 799, 814 (M.D. Tenn. 2002) (listing the Pledge of Allegiance as one of at least twelve examples of permissible government acknowledgments of the role of religion in American life); *Doe v. Harlan County Sch. Dist.*, 96 F. Supp.2d 667, 676 (E.D. Ky. 2000) (discussion of ceremonial deisms); *ACLU of Ky. v. McCreary County, Ky.*, 96 F. Supp.2d 679, 688 (E.D. Ky. 2000) (discussion of ceremonial deisms); *ACLU of Ky. v. Pulaski County, Ky.*, 96 F. Supp.2d 691, 700 (E.D. Ky. 2000) (discussion of ceremonial deisms); *Books v. City of Elkhart, Ind.*, 79 F. Supp.2d 979, 989-92 (N.D. Ind. 1999), *rev'd on*

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important distinction being that "school children are not coerced into reciting or otherwise actively led to participating in an endorsement of the markings on the money in circulation." U.S. Pet. App. at 15a n.8.

other grounds, 235 F.3d 292 (7th Cir. 2000), *cert. denied*, 532 U.S. 1058 (2001) (discussing the Pledge of Allegiance and other practices from our history and traditions that contain religious references and are consistent with the First Amendment); *Suhre v. Haywood County, N.C.*, 55 F. Supp.2d 384, 396-97 (W.D. N.C. 1999), (similar historical overview); *ACLU of Ohio v. Capitol Square Review and Advisory Bd.*, 20 F. Supp.2d 1176, 1181-82 (S.D. Ohio 1998), *rev'd on other grounds*, 210 F.3d 703 (6th Cir. 2000), *reh'g en banc granted and opinion vacated*, 222 F.3d 268 (6th Cir. 2000), *aff'd on reh'g en banc*, 243 F.3d 289 (6th Cir. 2001) (citing Supreme Court cases with favorable references to the pledge and saying that the Court has "never suggested" that the pledge is unconstitutional); *Coles v. Cleveland Bd. of Educ.*, 950 F. Supp. 1337, 1342 (N.D. Ohio 1996), *rev'd on other grounds*, 171 F.3d 369 (6th Cir. 1999) (listing the pledge as an example of an appropriate expression of religion); *Bown v. Gwinnett County Sch. Dist.*, 895 F. Supp. 1564, 1577-78 (N.D. Ga. 1995), *aff'd*, 112 F.3d 1464 (11th Cir. 1997) (similar discussion); *Donaggio v. Arlington County, Va.*, 880 F. Supp. 446, 455 n.20 (E.D. Va. 1995), *aff'd*, 78 F.3d 578 (4th Cir. 1996) (noting that the Supreme Court has not suggested that voluntary flag salutes are forbidden); *Chaudhuri v. Tennessee*, 886 F. Supp. 1374, 1384-85 (M.D. Tenn. 1995), *aff'd*, 130 F.3d 232 (6th Cir. 1997), *cert. denied*, 523 U.S. 1024 (1998) (listing the pledge as an example of a tradition that does not violate the Establishment Clause); *Carpenter v. City and County of San Francisco*, 803 F. Supp. 337, 346 (N.D. Cal. 1992), *rev'd on other grounds*, 93 F.3d 627 (9th Cir. 1996), *cert. denied*, 520 U.S. 1118 (1997) (similar discussion); *Allen v. Consolidated City of Jacksonville, Fla.*, 719 F. Supp. 1532, 1538 (M.D. Fla. 1989), *aff'd*, 880 F.2d 420 (11th Cir. 1989) (recognizing that the Supreme Court has rejected the view that any governmental reference to God has the effect of

advancing religion); *Smith v. Lindstrom*, 699 F. Supp. 549, 571-72 (W.D. Va. 1988), *aff'd*, 895 F.2d 953 (4th Cir. 1990), *cert. denied*, 498 U.S. 823 (1990) (discussion of *de minimus* entanglements between church and state); *Jewish War Veterans of the U.S. v. United States*, 695 F. Supp. 3, 11 (D. D.C. 1988) (listing the pledge as an example of a government reference to God that does not violate the Establishment Clause); *Reed v. Van Hoven*, 237 F. Supp. 48, 56 (W.D. Mich. 1965) ("the pledge of allegiance and patriotic songs or readings are permissible at any time, provided they are voluntary").

This body of federal law is uniform and thorough with respect to the application of the Establishment Clause to the Pledge of Allegiance and other similarly patriotic exercises that are intended to honor the United States of America. The Ninth Circuit's decision stands alone against the weight of rulings and observations made by the Supreme Court, individual Justices, the Seventh Circuit, and numerous lower federal courts.

CONCLUSION

For the foregoing reasons, the *amici* States urge the Court to grant the petitions and consider summary reversal.

Respectfully submitted,

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June 10, 2003

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Ala. Code § 16-43-5. Students to be afforded opportunity to voluntarily recite pledge of allegiance to United States flag.

The State Board of Education shall afford all students attending public kindergarten, primary and secondary schools the opportunity each school day to voluntarily recite the pledge of allegiance to United States flag.

Alaska Stat. § 14.03.130. Display of flags and pledge of allegiance.

(a) United States and Alaska flags shall be displayed upon or near each principal school building during school hours and at other times the governing body considers proper. The governing body shall require that the pledge of allegiance be recited regularly, as determined by the governing body. A person may recite the following salute to the flag of the United States or maintain a respectful silence: "I pledge allegiance to the flag of the United States of American and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

(b) A school district shall inform all affected persons at the school of their right not to participate in the pledge of allegiance. The exercise of the right not to participate in the pledge of allegiance may not be used to evaluate a student or employee or for any other purpose.

Ariz. Rev. Stat. Ann § 15-506. Flag display; recitation of the pledge of allegiance

School authorities shall purchase a United States flag, flagstaff and appurtenances, display the flag upon or near the school building during school hours and at such other times as they direct and set aside a specific time each day for those students who wish to recite the pledge of allegiance to the United States flag.

Ark. Code Ann. § 6-16-122. American heritage.

(a) Local school boards may allow and encourage any teacher or administrator in a public school district of this state to read or post in a public school building, classroom, or event any excerpts or portions of:

* * *

(7) The Pledge of Allegiance;

* * *

Cal. Educ. Code § 52720. Daily performance of patriotic exercises in public schools

In every public elementary school each day during the school year at the beginning of the first regularly scheduled class or activity period at which the majority of the pupils of the school normally begin the schoolday, there shall be conducted appropriate patriotic exercises. The giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy the requirements of this section.

In every public secondary school there shall be conducted daily appropriate patriotic exercises. The giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy such requirement. Such patriotic exercises for secondary schools shall be conducted in accordance with the regulations which shall be adopted by the governing board of the district maintaining the secondary school.

Conn. Gen. Stat. Ann. § 10-230. Flags in schoolrooms and schools. Policy on the reciting of the "Pledge of Allegiance"

* * *

(c) Each local and regional board of education shall develop a policy to ensure that time is available each school day for students in the schools under its jurisdiction to recite the "Pledge of Allegiance". The provisions of this subsection shall not be construed to require any person to recite the "Pledge of Allegiance".

Del. Code Ann. tit. 14, § 4105. Salute to flag and pledge of allegiance.

In the opening exercises of every free public school each morning, the teachers and pupils assembled shall salute and pledge allegiance to the American flag as follows: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

Fla. Stat. § 1003.44. Patriotic programs; rules

(1) Each district school board may adopt rules to require, in all of the schools of the district, programs of a patriotic nature to encourage greater respect for the government of the United States and its national anthem and flag, subject always to other existing pertinent laws of the United States or of the state. When the national anthem is played, students and all civilians shall stand at attention, men removing the headdress, except when such headdress is worn for religious purposes. The pledge of allegiance to the flag, "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all," shall be rendered by students standing with the right hand over the heart. The pledge of allegiance to the flag shall be recited at the beginning of the day in each public elementary, middle, and high school in the state. Each student shall be informed by posting a notice in a conspicuous place that the student has the right not to participate in reciting the pledge. Upon written request by his or her parent, the student must be excused from reciting the pledge. When the pledge is given, civilians must show full respect to the flag by standing at attention, men removing the headdress, except when such headdress is worn for religious purposes, as provided by Pub. L. ch. 77-435, s. 7, approved June 22, 1942, 56 Stat. 377, as amended by Pub. L. ch. 77-806, 56 Stat. 1074, approved December 22, 1942.

* * *

Ga. Code Ann. § 20-2-310. Access to campus or to student directory information by military forces; voter registration;

pledge of allegiance; instruction in correct use and display of flag

* * *

(c)(1) Each student in the public schools of this state shall be afforded the opportunity to recite the Pledge of Allegiance to the flag of the United States of America during each school day. It shall be the duty of each local board of education to establish a policy setting the time and manner for recitation of the Pledge of Allegiance. Such policy shall be established in writing and shall be distributed to each teacher within the school.

Idaho Code § 33-1602. United States Constitution – National flag and colors – National anthem – "America" – Citizenship.

* * *

(2) Instruction in the proper use, display and history of and respect for the American flag and the national colors shall be given in all elementary and secondary schools. Such instruction shall include the pledge of allegiance to the flag, the words and music of the national anthem, and of "America."

(3) Every school board of trustees shall cause the United States flag to be displayed in every classroom during the school hours of each school day.

(4) Every public school shall offer the pledge of allegiance or the national anthem in grades one (1) through twelve (12) at the beginning of each school day.

(5) No pupil shall be compelled, against the pupil's objections or those of the pupil's parent or guardian, to recite the pledge of allegiance or to sing the national anthem.

* * *

Ill. Ann. Stat. ch. 105, para. 5/27-3. Patriotism and principles of representative government – Proper use of flag – Method of voting – Pledge of Allegiance

American patriotism and the principles of representative government, as enunciated in the American Declaration of Independence, the Constitution of the United States of America and the Constitution of the State of Illinois, and the proper use and display of the American flag, shall be taught in all public schools and other educational institutions supported or maintained in whole or in part by public funds. No student shall receive a certificate of graduation without passing a satisfactory examination upon such subjects.

Instruction shall be given in all such schools and institutions in the method of voting at elections by means of the Australian Ballot system and the method of the counting of votes for candidates.

The Pledge of Allegiance shall be recited each school day by pupils in elementary and secondary educational institutions supported or maintained in whole or in part by public funds.

Ind. Code Ann. § 20-10.1-4-2.5. Protected writings, documents, and records of American history or heritage

Sec. 2.5. (a) This section applies to the following writings, documents, and records:

* * *

(4) The Pledge of Allegiance.

* * *

(b) A school corporation may allow a principal or teacher in the school corporation to read or post in a school building or classroom or at a school event any excerpt or part of a writing, document, or record listed in subsection (a).

Kan. Stat. Ann. § 72-5308. Patriotic exercises; flag etiquette, observation of holidays.

(a) The state board of education shall prepare for the use of the public schools a program providing for patriotic exercises the board deems to be expedient, under such instructions as may best meet the varied requirements of the different grades in such schools. The program of patriotic observation of every school district shall include:

(1) A daily recitation of the pledge of allegiance to the flag of the United States of America;

* * *

Ky. Rev. Stat. Ann. § 158.175. RECITATION OF LORD'S PRAYER AND PLEDGE OF ALLEGIANCE; INSTRUCTION IN PROPER RESPECT FOR AND DISPLAY OF THE FLAG; OBSERVATION OF MOMENT OF SILENCE OR REFLECTION

* * *

(2) The board of education of each school district shall establish a policy and develop procedures whereby the pupils in each elementary and secondary school may participate in the pledge of allegiance to the flag of the United States at the commencement of each school day.

* * *

La. Rev. Stat. Ann. § 17:2115. Silent prayer or meditation; pledge of allegiance

* * *

B. Each parish and city school board in the state shall also permit the proper authorities of each school to allow the opportunity for group recitation of the "Pledge of Allegiance to the Flag". Such recitation shall occur at the commencement of the first class of each day in all grades and in all public schools.

Me. Rev. Stat. Ann. tit. 20-A, § 4805. Other special observances

Other special observances shall be as follows.

1. Flag. It shall be the duty of instructors to impress upon the youth by suitable references and observances the

significance of the flag, to teach them the cost, the object and principles of our government, the inestimable sacrifices made by the founders of our Nation, the important contribution made by all who have served in the armed services of our country since its inception and to teach them to love, honor and respect the flag of our country that costs so much and is so dear to every true American citizen.

* * *

Md. Code Ann. Educ. § 7-105. Patriotic observances

* * *

(c) Each county board shall:

(3) Require all students and teachers in charge to stand and face the flag and while standing give an approved salute and recite in unison the pledge of allegiance as follows: "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

* * *

Mass. Gen. Laws Ann. ch. 71, § 69. Display of national flags; pledge of allegiance; penalty for violation

The school committee shall provide for each schoolhouse under its control, which is not otherwise supplied, flags of the United States of silk or bunting not less than two feet long, such flags or bunting to be manufactured in the United States, and suitable apparatus for their display

as hereinafter provided. A flag shall be displayed, weather permitting, on the school building or grounds on every school day and on every legal holiday or day proclaimed by the governor or the President of the United States for especial observance; provided, that on stormy school days, it shall be displayed inside the building. A flag shall be displayed in each assembly hall or other room in each such schoolhouse where the opening exercises on each school day are held. Each teacher at the commencement of the first class of each day in all grades in all public schools shall lead the class in a group recitation of the "Pledge of Allegiance to the Flag". A flag shall be displayed in each classroom in each such schoolhouse. Failure for a period of five consecutive days by the principal or teacher in charge of a school equipped as aforesaid to display the flag as above required, or failure for a period of two consecutive weeks by a teacher to salute the flag and recite said pledge as aforesaid, or to cause the pupils under his charge so to do, shall be punished for every such period by a fine of not more than five dollars. Failure of the committee to equip a school as herein provided shall subject the members thereof to a like penalty.

Miss. Code Ann. § 37-13-7. Pledges of Allegiance to flags

(1) The boards of trustees of the public schools of this state shall require the teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at least once during each school month, such oath of allegiance being as follows:

"I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one

nation under God, indivisible, with liberty and justice for all."

* * *

Mo. Rev. Stat. § 171.021. Schools receiving public moneys to display United States flag

* * *

2. Every school in this state which is supported in whole or in part by public moneys shall ensure that the Pledge of Allegiance to the flag of the United States of America is recited in at least one scheduled class of every pupil enrolled in that school no less often than once per week. No student shall be required to recite the Pledge of Allegiance.

Mont. Code Ann. § 20-7-133. Pledge of allegiance required – exemption for students and teachers

(1) Except as provided in subsection (4), the pledge of allegiance to the flag of the United States of America must be recited in all public schools of the state.

* * *

(4) A school district shall inform all students and teachers of their right to not participate in recitation of the pledge. Any student or teacher who, for any reason, objects to participating in the pledge exercise must be excused from participation. A student or teacher who declines to participate in the pledge may engage in any alternative form of

conduct so long as that conduct does not materially or substantially disrupt the work or discipline of the school.

* * *

Nev. Rev. Stat. Ann. § 389.040. Patriotic observance

Each public school shall set aside appropriate time at the beginning of each school day for pupils to pledge their allegiance to the flag of the United States. In addition, each public school may set aside appropriate time during the school day for additional patriotic observance.

N.H. Rev. Stat. Ann. § 194:15-c. New Hampshire School Patriot Act.

I. As a continuation of the policy of teaching our country's history to the elementary and secondary pupils of this state, this section shall be known as the New Hampshire School Patriot Act.

II. A school district shall authorize a period of time during the school day for the recitation of the pledge of allegiance. Pupil participation in the recitation of the pledge of allegiance shall be voluntary.

III. Pupils not participating in the recitation of the pledge of allegiance may silently stand or remain seated but shall be required to respect the rights of those pupils electing to participate. If this paragraph shall be declared to be unconstitutional or otherwise invalid, the remaining paragraphs in this section shall not be affected, and shall continue in full force and effect.

N.J. Stat. Ann. § 18A:36-3. Display of and salute to flag; pledge of allegiance

Every board of education shall:

* * *

(c) Require the pupils in each school in the district on every school day to salute the United States flag and repeat the following pledge of allegiance to the flag: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all," which salute and pledge of allegiance shall be rendered with the right hand over the heart, except that pupils who have conscientious scruples against such pledge or salute, or are children of accredited representatives of foreign governments to whom the United States government extends diplomatic immunity, shall not be required to render such salute and pledge but shall be required to show full respect to the flag while the pledge is being given merely by standing at attention, the boys removing the headdress.

N.M Stat. Ann. § 22-5-4.5. Pledge of allegiance.

Local school boards shall provide that the pledge of allegiance shall be recited daily in each public school in the school district according to regulations adopted by the state board.

N.Y. Educ. Law § 802. Instruction relating to the flag; holidays

1. It shall be the duty of the commissioner to prepare, for the use of the public schools of the state, a program providing for a salute to the flag and a daily pledge of allegiance to the flag, and instruction in its correct use and display which shall include, as a minimum, specific instruction regarding respect for the flag of the United States of America, its display and use as provided by federal statute and regulation and such other patriotic exercises as may be deemed by him to be expedient, under such regulations and instructions as may best meet the varied requirements of the different grades in such schools. However, such instruction shall include, as a minimum, the provisions of sections one hundred seventy through one hundred seventy-seven of title thirty-six of the United States Code.

* * *

N.C. Gen. Stat. § 115C-47. Powers and duties generally

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

* * *

(29a) To Encourage the Display of the United States and North Carolina Flags, and to Encourage the Recitation of the Pledge or Oath of Allegiance. – Local boards of education are encouraged to adopt policies to (i) provide for the display of the United States and North Carolina flags in each classroom, (ii) provide the opportunity for students to recite the Pledge or Oath of Allegiance on a regular basis, and (iii) provide age-appropriate instruction on the meaning and historical origins of the flag and the Pledge of Allegiance. These policies shall not compel any person to stand, salute the flag, or recite the Pledge of

Allegiance. If flags are donated or are otherwise available, flags shall be displayed in each classroom.

* * *

N.D. Cent. Code § 15.1-19-03.1. Recitation of prayer – Period of silence – Pledge of allegiance.

* * *

4. A school board may authorize the voluntary recitation of the pledge of allegiance by a teacher or one or more students at the beginning of each schoolday. A student may not be required to recite the pledge of allegiance, stand during the recitation of the pledge of allegiance, or salute the American flag.

Ohio Rev. Code Ann. § 3313.602. POLICY ON ORAL RECITATION OF PLEDGE OF ALLEGIANCE TO FLAG; EMPHASIS ON DEMOCRATIC AND ETHICAL PRINCIPLES; VETERANS' DAY OBSERVANCE

(A) The board of education of each city, local, exempted village, and joint vocational school district shall adopt a policy specifying whether or not oral recitation of the pledge of allegiance to the flag shall be a part of the school's program and, if so, establishing a time and manner for the recitation. The policy adopted under this division shall not require any student to participate in the recitation and shall prohibit the intimidation of any student by other students or staff aimed at coercing participation.

* * *

Okla. Stat. Ann. tit. 70, § 24-106. United States flag – Display – Instruction in history and **etiquette** – Pledge of allegiance

* * *

C. Students are authorized to recite, at the beginning of each school day, the pledge of allegiance to the flag of the United States of America as enumerated at 36 U.S.C., Section 172. Each student shall be informed by posting a notice in a conspicuous place that students not wishing to participate in the pledge shall not be required to do so.

Or. Rev. Stat. § 339.875. Procurement, display and salute of flags.

(1) Each district school board shall:

(a) Procure a United States flag and an Oregon State flag of suitable sizes and shall cause such flags to be displayed upon or near each public school building during school hours, except in unsuitable weather, and at such other times as the board deems proper.

(b) Provide students with the opportunity to salute the United States flag at least once each week of the school year by reciting: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

(2) Students who do not participate in the salute provided for by this section must maintain a respectful silence during the salute.

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24 Pa. Cons. Stat. Ann. § 7-771. Display of United States flag; development of patriotism

* * *

(c)(1) All supervising officers and teachers in charge of public, private or parochial schools shall cause the Flag of the United States of America to be displayed in every classroom during the hours of each school day and shall provide for the recitation of the Pledge of Allegiance or the national anthem at the beginning of each school day. Students may decline to recite the Pledge of Allegiance and may refrain from saluting the flag on the basis of religious conviction or personal belief. The supervising officer of a school subject to the requirements of this subsection shall provide written notification to the parents or guardian of any student who declines to recite the Pledge of Allegiance or who refrains from saluting the flag.

(2) This subsection shall not apply to any private or parochial school for which the display of the flag, the recitation of the Pledge of Allegiance or the salute of the flag violates the religious conviction on which the school is based.

* * *

R.I. Gen. Laws § 16-22-11. Pledge of allegiance.

(a) All public schools, commencing with preprimary school through and including high school, shall commence each day with the following pledge:

"I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all."

(b) Any person not wishing to participate in the "pledge of allegiance" is exempt from participation and need not participate in the pledge.

S.C. Code Ann. § 59-1-455. Time for pledge of allegiance required.

Beginning with the 1991-92 school year, all public school students, commencing with grades kindergarten through and including high school, shall during the course of each school day's activities at a specific time which must be designated by the local school say the Pledge of Allegiance as follows:

"I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Any person not wishing to say the "Pledge of Allegiance" or otherwise participate in saying the "Pledge of Allegiance" is exempt from participation and may not be penalized for failing to participate.

A person who does not wish to participate may leave the classroom, may remain in his seat, or may express his nonparticipation in any form which does not materially infringe upon the rights of other persons or disrupt school activities.

S.D. Codified Laws Ann. § 13-24-17.2. Right to post flag, recite pledge of allegiance and sing national anthem not to be infringed.

The right to post the United States flag shall not be limited or infringed upon in any public school classroom, public school building, at any public school event, or on any public school uniform. The right to recite the pledge of allegiance to the flag of the United States shall not be limited or infringed upon, and the national anthem may be sung during any school day or school event.

Tenn. Code Ann. § 49-6-1001. American flag and emblems

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(c)(1) Each board of education shall require the daily recitation of the pledge of allegiance in each classroom in the school system in which a flag is displayed. Each LEA is encouraged to have a flag in each classroom and patriotic, fraternal, and other organizations or individuals are encouraged to donate flags to schools to enable them to have the flag of the United States of American present in each classroom. Each board of education shall determine the appropriate time during the school day for the recitation of the pledge of allegiance. At the time designated for the recitation of the pledge of allegiance, students shall stand and recite the pledge of allegiance while facing the flag with their right hands over their hearts or in an appropriate salute if in uniform; provided, however, that no student shall be compelled to recite the pledge of allegiance if the student or the student's parent or legal guardian objects on religious, philosophical or other grounds to the student participating in such exercise. Students who are thus exempt from reciting the pledge of allegiance shall remain quietly standing or sitting at their desks while others recite the pledge of allegiance and shall make no display that disrupts or distracts others who are

reciting the pledge of allegiance. Teachers or other school staff who have religious, philosophical, or other grounds for objecting are likewise exempt from leading or participating in the exercise. If a teacher chooses not to lead the pledge, another suitable person shall be designated either by the teacher or principal to lead the class. Each board of education shall provide appropriate accommodations for students, teachers or other staff who are unable to comply with the procedures described herein due to disability.

* * *

Utah Code Ann. § 53A-13-101.6. Instruction on the flag of the United States of America.

* * *

(3)(a) The pledge of allegiance to the flag shall be recited at the beginning of the day in each elementary public school in the state.

(b) Local school boards are encouraged to provide for the reciting of the pledge of allegiance to the flag once a week at the beginning of a school day in their secondary schools.

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Va. Code Ann. § 22.1-202. Instruction in history and principles of flags of United States and Virginia; pledge of allegiance to American flag; guidelines developed by the Board

* * *

C. Each school board shall require the daily recitation of the Pledge of Allegiance in each classroom of the school division and shall ensure that the flag of the United States is in place in each such classroom. Each school board shall determine the appropriate time during the school day for the recitation of the Pledge. During such Pledge of Allegiance, students shall stand and recite the Pledge while facing the flag with their right hands over their hearts or in an appropriate salute if in uniform; however, no student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise. Students who are thus exempt from reciting the Pledge shall remain quietly standing or sitting at their desks while others recite the Pledge and shall make no display that disrupts or distracts others who are reciting the Pledge. School boards shall provide appropriate accommodations for students who are unable to comply with the procedures described herein due to disability.

The school board's code of conduct shall apply to disruptive behavior during the recitation of the Pledge in the same manner as provided for other circumstances of such behavior.

Wash. Rev. Code Ann. § 28A.230.140. United States flag – Procurement, display, exercises – National anthem

The board of directors of every school district shall cause a United States flag being in good condition to be displayed during school hours upon or near every public school plant, except during inclement weather. They shall cause appropriate flag exercises to be held in each classroom at the beginning of the school day, and in every

school at the opening of all school assemblies, at which exercises those pupils so desiring shall recite the following salute to the flag: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all". Students not reciting the pledge shall maintain a respectful silence. The salute to the flag or the national anthem shall be rendered immediately preceding interschool events when feasible.

W. Va. Code § 18-5-15b. Pledge of allegiance to the flag

Every instructional day in the public schools of this state shall be commenced with a pledge of allegiance to the flag of the United States. Pupils who do not wish to participate in this exercise shall be excused from making such pledge.

Wis. Stat. Ann. § 118.06. Flag, pledge of allegiance, and national anthem

* * *

(2) Every public school shall offer the pledge of allegiance or the national anthem in grades one to 12 each school day. Every private school shall offer the pledge of allegiance or the national anthem in grades one to 12 each school day unless the governing body of the private school determines that the requirement conflicts with the school's religious doctrines. No pupil may be compelled, against the pupil's objections or those of the pupil's parents or guardian, to recite the pledge or to sing the anthem.